NO. 85-1630

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1985

Supreme Court, U.S.
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LOWELL D. HEWITT, Superintendent;
B.B. KYLER, C.O. III;
R.E. STOTELMYER, Major;
B.K. SMITH, Counselor III;
K.R. HILEMAN, Farm Manager;
D.R. ERHARD, Deputy Superintendent
for Treatment; T.W. HENRY,
Director of Treatment;
W. MATEER, C.I. Manager,
Petitioners

v.

AARON HELMS,
Respondent

On Writ of Certiorari to the
United States Court of Appeals
For the Third Circuit

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	Page
Table of Authorities.....	ii
I. THE LACK OF SUCCESS.....	3
II. THE POLICY OF IMMUNITY.....	15
CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases	Page
City of Riverside v. Rivera, No. 85-224 (June 27, 1986)	10
Hensley v. Eckerhart, 461 U.S. 424 (1983)	8
Kentucky v. Graham, No. 84-849 (June 28, 1985)	18
Maher v. Gagne, 448 U.S. 122 (1980)	7
Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970)	11, 12
Pulliam v. Allen, 466 U.S. 522 (1984)	15, 16, 17, 18
Ruckelshaus v. Sierra Club, 463 U.S. 680 (1983)	18
Supreme Court of Virginia v. Consumers Union of United States, Inc., 446 U.S. 719 (1980)	17
Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 455 U.S. 464 (1982)	13, 14
Warth v. Seldin, 422 U.S. 490 (1975)	13

STATUTES

Page

Civil Rights Attorneys Fees
Awards Act, 42 U.S.C.
§ 1988..... 1

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In our opening brief, we argued that the Civil Rights Attorneys Fees Awards Act, 42 U.S.C § 1988, requires that a civil rights plaintiff, or those whom he represents in a class action, secure some relief in order to be a prevailing party entitled to an award under the Act. Since respondent did not

receive any relief in this litigation, we argued that it was error for the Court of Appeals to find him to be a prevailing party. Our premise is straightforward: in this action, Helms sought damages, injunctive relief and a declaratory judgment, all on his behalf alone. Since petitioners were found to be immune from damages, since Helms received no injunction, and since neither the Court of Appeals nor the District Court entered -- or could have have entered -- a declaratory judgment, this action provided no benefit to respondent. In addition, we argued that to award fees to such a plaintiff despite his lack of success would undermine the qualified immunity defense for government officials and unnecessarily encourage spiraling litigation to avoid the possibility of an assessment of fees

-- an especially undesirable result where, as here, the continued litigation has no effect on the relief available on the plaintiff's substantive claims.

Respondent has presented several arguments, most of which have been addressed in our principal brief. A few contentions, however, warrant a reply.

I. THE LACK OF SUCCESS

In opposition to our argument that Helms should not be regarded as a prevailing party since he obtained no benefit from this litigation, Helms advances two primary contentions: 1) that he sought relief not only against the wrong allegedly done to him personally but also against the general "policies" of petitioners, and 2) that a

statement of law in a court's opinion -- irrespective of the effect on the litigants -- is sufficient "vindication" to qualify as a benefit entitling respondent to fees under the Attorneys Fees Awards Act. Upon scrutiny, neither contention is supportable.

A. In the first place, Helms' argument to the contrary notwithstanding, this case was not brought as a general attack upon the Pennsylvania policies on inmate discipline or disciplinary procedures. The complaint clearly discloses that the action was brought only to redress what Helms believed was a violation of his personal right to due process in connection with his own disciplinary hearing. (J. App. 18a-19a) He sought a declaratory judgment that his rights were violated, an injunction reversing his disciplinary

conviction and expunging his inmate file, and damages from petitioners for their having found him guilty of the prison misconduct. (J. App. 19a-20a) Nowhere did Helms mount a broad-based attack against the constitutionality of state policies nor did he seek relief on behalf of a class of persons confined to state prison. (J. App. 7a-8a) Thus, it is particularly disingenuous for respondent to argue that his "primary interest" (Resp. Br. p. 11) in bringing the litigation was to pursue what he now calls "the most significant issue" (Resp. Br. p. 17) -- a general attack on the state's policies.[1] The record simply fails to support Helms' position.

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[1]Respondent also relies on the fact that his complaint contained a request for "such other relief as may be

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Indeed, the record discloses that Helms offered absolutely no proof in his summary judgment motion in the District Court on the general policies of inmate discipline. Instead, what was before the District Court and what the Court of Appeals determined on Helms' first appeal was simply the sufficieny of the evidence used to find Helms quilty of the prison misconduct. Nowhere did he allege, much less prove, that state policies in general were unconstitutional. (See Motion for Summary

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(FOOTNOTE CONTINUED)

necessary and proper." (J. App. 20a-21a) If such a generalized request is sufficient to overcome the case or controversy requirements of Article III and preserve a claim for personal benefit, certainly there would be no need for a plaintiff to plead for damages, an injunction or a declaratory judgment, but instead simply rely on the court to fashion his relief. Certainly, this cannot be correct.

Judgment dated May 9, 1980) Thus, the "declaration" of the Court of Appeals relied upon by respondent for his vindication benefited no one, including Helms.

B. On respondent's second contention with respect to his claimed success, Helms apparently is confusing the concept of non-formal success with personal benefit. There can be no quarrel, of course, with the proposition that a party may be considered prevailing "without formally obtaining relief." Maher v. Gagne, 448 U.S. 122, 179 (1980); S. Rep. 94-1011, p. 5. As the Solicitor General points out (Br. for United States, p. 8), the legislative history shows that the distinction Congress drew was between formal

relief, e.g., judgment or injunction, and informal relief, e.g., settlement or consent decree. This is materially different from the concept of personal benefit, since a personal benefit could be either formal or informal, but relief--in whatever form it takes--may not necessarily create a benefit for the litigant.

The latter situation is precisely the case here, for as we demonstrated in our principal brief, respondent achieved none of the benefit he sought in bringing this suit. See Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). He was awarded no damages, no injunction was ever entered, and the need for other equitable relief had been rendered moot by the time the Court of Appeals issued its statement of the law on prisoner due process.

Helms appears to suggest that our position cannot be correct because, in his view, it would foster unnecessary class actions in order to prevent a named party's claim from becoming moot in the course of the litigation. Obviously, if respondent had intended to challenge the state's procedures generally, he could have done so with or without class certification, assuming, of course, that he possessed the required standing. That Helms chose not to pursue a class action or an attack on the constitutionality of the procedures in general should not run to the detriment of petitioners.[2] His equitable

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[2]In fact, there was no proof that petitioners had any prescribed procedures or standards for assessing information provided by confidential informants. Certainly, the Court of Appeals said no more than the quantum of evidence produced at respondent's disciplinary hearing was insufficient to sustain the misconduct charges.

claims were rendered moot. Surely, the question of fees should not depend on what kind of an action a plaintiff could have pursued but elected not to.

Much of respondent's brief is devoted to a discussion of the value of the "private attorney general" concept which underlies the Attorneys Fees Awards Act. There can be no question that this concept represents a legislative expression of the incentive necessary to encourage private parties to pursue civil rights actions or that this policy is one that Congress considered of great importance. City of Riverside v. Rivera, No. 85-224 (June 27, 1986), slip op. at 12. This expression of legislative intent, however, must be read with the overlay of

Article III of the Constitution and this Court's repeated concern that entitlement to fees not be divorced from the merits of the claims. Awarding fees where a litigant obtains a benefit for a party is consistent with the private attorney general concept; awarding them for a plaintiff's avowed assertion of the rights of future non-parties is not.[3]

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[3]Helms' strong reliance upon Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), is misplaced. Respondent suggests that Mills stands for the proposition that attorney's fees are appropriate where a plaintiff succeeds "in establishing a cause of action even though the plaintiff may ultimately not be entitled to any relief" (Resp. Br. pp. 27-28), as long as he "renders a service." (Resp. Br. pp. 30-31) What Helms neglects to point out, however, is

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No matter how far Helms attempts to stretch the private attorney general concept, it cannot be extended beyond the limits of Article III of the Constitution. Respondent repeatedly argues that it is immaterial that he received no personal benefit and suggests that his "victory" will inure to the benefit of unnamed others who someday may be faced with a prison misconduct charge

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that the plaintiffs in Mills succeeded in obtaining summary judgment on the issue of defendants' liability which was affirmed by this Court. 396 U.S. at 379. Thus, the plaintiffs in Mills had succeeded in obtaining partial judgment in their favor -- considerably different from stating a claim or rendering a service to the nation's jurisprudence.

supported by confidential informant testimony. In any given case, of course, it is conceivable that a court's decision may affect others collaterally; however, the court's power under Article III "exists only to redress or otherwise to protect against injury to the complaining party." Warth v. Seldin, 422 U.S. 490, 499 (1975)(emphasis supplied). Those who do not possess standing under Article III may not even litigate in the courts of the United States. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 475 (1982). To award attorney's fees where the complaining party possessed no right to request relief from the court, much less reap a reward, cannot be consistent with the limitations of Article III. As the

Court stated in Valley Forge, Article III requirements are "not merely a troublesome hurdle to be overcome if possible" in order to reach the merits of a case; they are an integral part of the constitutional limitations on a federal court's power to hear cases. Ibid.[4]

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[4]Respondent quotes (Resp. Br. p. 19) from a portion of a House report, No. 94-1558, p. 9, which, taken out of its context, appears to support his view of the definition of prevailing party. But the quoted language appears in the report's discussion of the standards for computing a reasonable fee. What constitutes a prevailing party -- the issue here -- is discussed elsewhere. See H. Rep. No. 94-1558, pp. 6-8. Moreover, the quoted language, which mentions the availability of fees even if immunity precludes an award of damages, nowhere supports the view that fees are available if no relief is awarded.

II. THE POLICY OF IMMUNITY

Our argument that awarding fees to respondent would weaken the policy underlying the qualified immunity defense for public officials is met primarily by respondent's citation to the Court's decision in Pulliam v. Allen, 466 U.S. 522 (1984). Helms' reading of Pulliam is a gross over-simplification of the decision.

In Pulliam, the Court held that judicial immunity was not a bar to an award of attorney's fees under §1988 where the plaintiffs obtained an injunction from a federal court against a state magistrate's bail practices. After surveying the common law under-pinnings of the judicial immunity doctrine, the Court concluded that neither the English nor American common

law recognized an absolute judicial immunity from prospective relief and that, in enacting the Civil Rights Act, Congress did not express an intent to abrogate the common law rule. Once the Court determined that the doctrine of judicial immunity did not prevent the entry of an injunction, it concluded that the purpose of awarding attorney's fees under § 1988 would be thwarted if the doctrine prevented the successful plaintiffs from recovering fees for having obtained their injunction. Id., 466 U.S. at 543-44.

Unlike respondent here, the plaintiffs in Pulliam were entitled to and did achieve a personal benefit -- an injunction -- against the defending state official. Thus, if Helms had obtained an

injunction or other relief on his claim, the fact that petitioners are immune from damages would not by itself necessarily preclude an award of fees for Helms' success. But this case is not Pulliam, since respondent achieved none of the relief sought in his action.

This reading of Pulliam is supported by the Court's quotation from Supreme Court of Virginia v. Consumers Union of United States, Inc., 446 U.S. 719, 739-39 (1980):

> The House Committee Report on § 1988 indicates that Congress intended to permit attorney's fees awards in cases in which prospective relief was properly awarded against defendants who would be immune from damages awards.

466 U.S. at 544. The Court in Pulliam therefore was concerned with the issue whether fees should be awarded against a state official against whom an injunction properly had been entered, not with the issue as here whether fees are available from state officials against whom no relief has been, or could have been, awarded.

"[L]iability on the merits and responsibility for fees go hand in hand...;" only the party "legally responsible for relief on the merits" should be responsible for attorney's fees. Kentucky v. Graham, No. 84-849 (June 28, 1985), Slip op. at 5. See also Ruckleshaus v. Sierra Club, 463 U.S. 680, 685 (1983)(a "successful party need not pay its unsuccessful adversary's fees"). Pulliam recognizes that success on the merits supports a fee

award in the absence of a congressional policy statement to the contrary. Congress did not, however, divorce liability on the merits from responsibility for fees. Thus, a plaintiff should not be permitted to dilute an official's immunity by recovering fees when the plaintiff receives no relief from the official. As we demonstrated in our principal brief, the facts of this case would undermine the well-settled immunity for state officials if respondent is entitled to fees despite his failure to obtain relief from the officials.[4]

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[4]Finally, we fail to understand the significance of Helms' argument that Pennsylvania's Office of Attorney General, rather than private counsel, has represented petitioners in this litigation. (Resp. Br. pp. 51-52) The

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mere fact that the Commonwealth elects to provide representation to its employees, as a benefit of employment, when they are sued as individuals in federal court does not convert an action against the individual employees into an action against the state itself. And Helms' suggestion that our position on his entitlement to fees somehow is an attempt to transfer responsibility for the payment of fees to the individuals has absolutely no foundation either in or outside the record.

CONCLUSION

For the reasons stated above and in our opening brief, the decision of the Court of Appeals should be reversed with directions to affirm the District Court's denial of respondent's application for attorney's fees.

Respectfully submitted,

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